

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

UNITED STATES OF AMERICA,  
 Plaintiff,  
 v.  
 JAMES GILBERT KELLEMS,  
 Defendant.

Case No. [11-cr-00341-BLF-1](#)

**ORDER DENYING MOTION TO STAY  
 PETITION UNDER 28 U.S.C. § 2255**

Defendant James Gilbert Kellems has moved to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. *See* ECF 133. In response, the government filed a motion to stay the proceedings pending the Supreme Court’s decision in *Beckles v. United States*, No. 15-8544, which is set to consider “whether the holding of *Johnson v. United States*, 135 S. Ct. 2551 (2015), applies to the residual clause of the career offender guideline, U.S.S.G. §4B1.2(a)(2)” and “if so, whether *Johnson*’s invalidation of the residual clause of the career offender guideline applies retroactively on collateral review.” Mot. at 1, ECF 140. Defendant opposes the motion and the government has filed a reply. *See* ECF 141, 142. For the reasons stated below, the government’s motion to stay is DENIED.


“[H]abeas proceedings implicate special considerations that place unique limits on a district court’s authority to stay a case in the interests of judicial economy.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000). Like a habeas petition, a § 2255 motion “challenging illegality of detention, is reduced to a sham if trial courts do not act within a reasonable time.” *Id.* at 1120 (quoting *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978)) (internal alteration omitted). Even in civil cases, a party seeking a stay must show “a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay . . . will work damage to

1 someone else.” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936).

2 Here, the government offers judicial economy as the sole reason for staying proceedings.  
3 While the Court agrees with the government that the Supreme Court’s ruling in *Beckles* could  
4 affect the outcome of this case, the Court finds that there is a “fair possibility that the stay” could  
5 unduly delay Mr. Kellems’s release from custody, which could otherwise be as early as November  
6 or December 2017 if his *Johnson* motion succeeds. Reply 3, ECF 142. The government has  
7 failed to show any hardship or inequity to justify such a possibility. Accordingly, the  
8 government’s motion to stay is DENIED.

9 **IT IS SO ORDERED.**

10 Dated: September 12, 2016

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12 BETH LABSON FREEMAN  
13 United States District Judge  
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